



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0193; Docket No. 2019-0003; Sequence No. 22]

Submission for OMB Review; FAR Part 9 Responsibility Matters

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding the responsibility of prospective contractors.

DATES: Submit comments on or before **[Insert date 30 days after date of publication in the *Federal Register*.]**

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Office of Information and Regulatory Affairs of OMB,
Attention: Desk Officer for GSA, Room 10236, NEOB,
Washington, DC 20503 or at Oira_submission@omb.eop.gov.

Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal*: This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to <http://www.regulations.gov> and follow the instructions on the site.
- *Mail*: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000-0193, FAR Part 9 Responsibility Matters.

Instructions: All items submitted must cite Information Collection 9000-0193, FAR Part 9 Responsibility Matters. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at telephone 703-605-2868, or mahruba.uddowla@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. OMB control number, Title, and any Associated Form(s):

9000-0193, FAR Part 9 Responsibility Matters

B. Needs and Uses

DoD, GSA, and NASA are in the process of combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify all burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on the public. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with reviewing, processing, or commenting on multiple information collections.

This justification supports renewal of OMB Control No. 9000-0193 and combines it with the previously approved information collections OMB Control No(s). 9000-0094, with the new title "FAR Part 9 Responsibility Matters". Upon approval of this consolidated information collection, OMB Control No(s). 9000-0094 will be discontinued. The burden

requirements previously approved under the discontinued Number(s) will be covered under OMB Control No. 9000-0193.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

1. Prohibition on Contracting With Corporations with Delinquent Taxes or a Felony Conviction (FAR 52.209-11, 52.209-12, and 52.212-3(q)). FAR provision 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, and its equivalent for commercial acquisitions at FAR provision 52.212-3(q), implement sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235). Sections 744 and 745 prohibit agencies from entering into a contract with any corporation with any delinquent Federal tax liability or a felony conviction, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

FAR provision 52.209-12, Certification Regarding Tax Matters, implements section 523 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2015

(Division B) and the same provision in subsequent appropriations acts. Agencies funded by these acts include the Department of Commerce, the Department of Justice, NASA, as well as some smaller agencies. This section prohibits award of any contract in an amount greater than \$5,000,000 by those covered agencies, unless the offeror affirmatively certifies that it has filed all Federal tax returns required during the three years preceding the certification; has not been convicted of a criminal offense under the Internal Revenue Code of 1986; and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

2. Debarment, Suspension, and other Responsibility Matters

(FAR 52.209-5, 52.209-6, and 52.212-3(h)). The Competition in Contracting Act of 1984 requires that contract awards be made to responsible prospective contractors only. To be determined responsible, a prospective contractor must meet a series of general standards. The standards include

having a satisfactory record of integrity and business ethics, and being otherwise qualified and eligible to receive an award under applicable laws and regulations. FAR provision 52.209-5, Certification Regarding Responsibility Matters, and its equivalent for commercial acquisitions at FAR provision 52.212-3(h), require the disclosure of certain critical factors by an offeror to be considered by the contracting officer in making a responsibility determination. These critical factors, e.g. suspended, debarred, criminal offense conviction, etc, determine whether the offeror is eligible for an award. The provision also requires offerors to provide immediate written notice to the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

FAR clause 52.209-6, Protecting the Government's Interest When Subcontracting with Contractor's Debarred, Suspended, or Proposed for Debarment, similarly ensures that the Government deals with responsible subcontractors. Paragraph (b) of 52.209-6 prohibits contractors from entering into any subcontract in excess of \$35,000 with a subcontractor that is debarred, suspended, or proposed for

debarment by any executive agency unless there is a compelling reason to do so. Paragraph (c) of the clause requires the contractor to require each proposed subcontractor whose subcontract will exceed \$35,000, to disclose to the contractor in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Government. Paragraph (d) of clause requires that before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment, a corporate officer or designee of the contractor must notify the contracting officer, in writing, of the name of the subcontractor; why the subcontractor is debarred, suspended, or ineligible; the compelling reason(s) for doing business with the subcontractor; and how the contractor will protect the Government's interests when dealing with such subcontractor. For any subcontract subject to Government consent, contracting officers shall not consent to such subcontracts, unless the agency head or a designee states in writing the compelling reasons for approving such subcontract.

3. Information Regarding Responsibility Matters and Updates to that Publicly Available Information (FAR 52.209-7 and

52.209-9) . Section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417), enacted on October 14, 2008, required the development and maintenance of an information system that contains specific information on the integrity and performance of covered Federal agency contractors and grantees. The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed to address these requirements. FAPIIS provides users access to integrity and performance information from the FAPIIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), as well as proceedings information and suspension/debarment information from SAM. FAR provision 52.209-7, Information Regarding Responsibility Matters, requires information that is necessary to: (1) determine the responsibility of prospective contractors; and (2) ensure that contractors maintain for accuracy and completeness, their integrity and performance information upon which responsibility determinations rely. Paragraph (b) of the provision contains a check box to be completed by the offeror indicating whether or not it has current active Federal contracts and grants with total value greater than \$10,000,000. Paragraph (c) of the provision states that, if

the offeror indicated in paragraph (b) that it has current active Federal contracts and grants with total value greater than \$10,000,000, then, by submission of the offer, the offeror represents that the information entered into FAPIIS is current, accurate, and complete as of the date of submission of the offer.

FAR clause 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters, implements the requirement to keep FAPIIS up-to-date and the requirement of section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), to make all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, publicly available. Paragraph (a) of the clause at 52.209-9 requires the contractor to update responsibility information on a semiannual basis, throughout the life of the contract, by posting the information in SAM. Paragraph (c) of the clause lets contractors know of their ability to provide feedback on information posted by the Government in FAPIIS and the procedure to follow in the event information exempt from public disclosure is slated to become publicly available information in FAPIIS.

4. Prohibition on Contracting with Inverted Domestic Corporations (FAR 52.209-2, 52.209-10, and 52.212-3(n)).

Section 745 of Division D of the Consolidated Appropriations Act, 2008 (Pub. L. 110-161) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) prohibit, on a Governmentwide basis, the use of appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of such a corporation.

FAR provision 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations-Representation, and its equivalent for commercial acquisitions at FAR provision 52.212-3(n), requires each offeror to represent whether it is, or is not, an inverted domestic corporation or a subsidiary of an inverted domestic corporation.

FAR clause 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations, requires the contractor to promptly notify the contracting officer in the event the contractor becomes an inverted domestic corporation or a subsidiary of an inverted domestic corporation during the period of performance of the contract.

C. Annual Burden

Respondents/Recordkeepers: 1,333,801. (1,328,450
respondents + 5,351 recordkeepers)

Total Annual Responses: 1,437,826.4.

Total Burden Hours: 1,511,005. (975,905 reporting
hours + 535,100 recordkeeping hours)

D. Public Comment

A 60-day notice published in the *Federal Register* at 84 FR 24523 on May 28, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 9000-0193, FAR Part 9 Responsibility Matters, in all correspondence.

Janet Fry,
Director,
Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

BILLING CODE: 6820-EP

[FR Doc. 2019-16976 Filed: 8/7/2019 8:45 am; Publication Date: 8/8/2019]